



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF MAY 8, 2014**

**CALL TO ORDER:** Chairperson Pentaleri called the meeting to order at 7:00 p.m.

**PRESENT:** Chairperson Pentaleri, Commissioners Bonaccorsi, Dorsey, Jones, Karipineni, Leung, Reed

**ABSENT:** None

**STAFF PRESENT:** Wayne Morris, Principal Planner  
Bill Roth, Associate Planner  
Alice Malotte, Recording Clerk  
Chavez Company, Remote Stenocaptioning  
Napoleon Batalao, Video Technician

**APPROVAL OF MINUTES:** Regular Meeting of April 10, 2014, approved as submitted.

**DISCLOSURES:** **Commissioner Reed** drove by the sites of Items 1 and 2.  
**Commissioner Dorsey** and **Vice Chairperson Jones** drove by the site of Item 2.  
**Commissioner Karipineni, Commissioner Leung** and **Commissioner Bonaccorsi** drove by the site of Item 1 and walked the site of Item 2.

**CONSENT CALENDAR** None

**PUBLIC/ORAL COMMUNICATIONS**

**PUBLIC HEARING ITEMS**

- Item 1. **NK Learning Center - 46517 Mission Boulevard - (PLN2014-00223)** - To consider a Conditional Use Permit to allow a dance studio and educational learning center for all ages locate in the Warm Springs Community Plan Area, and to consider a categorical exemption from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Existing Facilities).

**Chairperson Pentaleri** opened the Public Hearing.

**Mr. Duant** stated that he was helping applicant Gireesh Malhotra. The Warm Springs area lacked a dance or education center where people and their children could gather. The Warm Springs Plaza offered retail, fast food and service uses, such as martial arts, and had available space where dance and education could be offered.

**Commissioner Bonaccorsi** asked if they planned Bollywood/fitness dancing along with a learning center.

**Mr. Duant** stated that the idea was that the children and the parents would have one place where they could take advantage of both.

**Commissioner Bonaccorsi** suggested that Condition No. 8, concerning hours of operation, could be expanded now rather than later if the applicants found that they wished to expand their hours of operation and would have to bring their request to the Zoning Administrator. The existing businesses in this shopping center operated into the evening hours and his hours of operation could be Monday through Friday, 12:00 p.m. to 9:00 p.m., Saturday, 12:00 p.m. to 9:00 p.m., and Sunday 12:00 p.m. to 7:00 p.m. These hours would act as a placeholder and did not require that this business be open until 9:00 p.m. His motion would include those hours. Would he object to these hours?

**Mr. Duant** did not object.

**Chairperson Pentaleri** closed the Public Hearing.

IT WAS MOVED (BONACCORSI/REED) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0-0) THE PLANNING COMMISSION – FOUND THAT THE PROJECT IS CATEGORICALLY EXEMPT FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER CEQA GUIDELINES SECTION 15301 (EXISTING FACILITIES);

AND

FOUND THAT THE CONDITIONAL USE PERMIT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE ELEMENT AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVED CONDITIONAL USE PERMIT PLN2014-00223 AS SHOWN IN EXHIBIT "A," BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT "B;"

AND

THAT CONDITION 7 BE MODIFIED AS FOLLOWS: THE HOURS OF OPERATION SHALL BE MONDAY THROUGH SATURDAY FROM 12:00 P.M. TO 9:00 P.M. AND SUNDAY FROM 12:00 P.M. TO 7:00 P.M.

The motion carried by the following vote:

AYES: 7 – Bonaccorsi, Dorsey, Jones, Karipineni, Leung, Pentaleri, Reed  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0  
RECUSE: 0

- Item 2. **SHANNON TOWNHOMES - 38861 and 38873 Mission Boulevard - (PLN2013-00188)** - To consider a Rezoning from R-G-29, Garden Apartment Residence District to Preliminary and Precise Planned District P-2013-188, Vesting Tentative Tract Map No. 8186 and a Private Street to allow the development of a 25-unit multi-family residential project located in the Central Community Plan Area, and to consider a Mitigated Negative Declaration prepared for the project in accordance with the requirements of the California Environmental Quality Act (CEQA).

**NOTES AND CORRECTIONS ON STAFF REPORT:**

- (1) Append to “Info Item 5 - Community Correspondence” recently received community correspondence.
- (2) Add new “Info Item 6 - April 21, 2014 Shannon Townhomes Neighborhood Meeting Attendance,” as provided by Applicant.
- (3) Add new “Info Item 7 – Shannon Townhomes Supporting Neighbor Signatures,” as provided by Applicant.
- (4) Delete the following sentence from page 8 of the Planning Commission report for the Shannon Townhomes project:  
~~Prior to building permit issuance, the applicant may seek approval of a different alternative as permitted under the AHO if timely approved by the City Council.~~

**NOTES AND CORRECTIONS ON CONDITIONS OF APPROVAL:**

Add Condition E-14 to the Conditions of Approval.

*E-14. Vine plants shall be used to provide partial screening of the perimeter wall adjacent to the railroad. Holes shall be incorporated into the body of the wall to allow for plantings on the project side of the wall to have vines run on the railroad side of the wall.*

**Associate Planner Roth** stated that this project involved a rezoning of two adjacent parcels that would allow development of the approximately 1.5 acres, which would create 28 townhomes. The two properties currently contained two single-family dwellings, along with several outbuildings, all of which would be removed. North of the site was the 15-unit Cherry Park townhome development; south was the Mission Way Church; east, across Mission Boulevard, were single-family homes; and west were the Union Pacific railroad tracks and beyond were more single-family homes on the opposite side of the street. This project would be consistent with the General Plan

designation of Residential Medium Density, with six buildings, three common open space areas, and driveways off of the private street.

**Chairperson Pentaleri** welcomed new **Associate Planner Roth** to the City. He opened the Public Hearing.

**Hays Shair**, Project Manager, introduced architect **Tim Nystrom** with Dahlin Group, who highlighted the project.

**Tim Nystrom**, Architect, stated that the Tuscan look would provide old world charm with a variety of materials and variable massing throughout. Five large, heritage trees would be saved, three of which were cedar and the site had been planned around these trees. A large, central, open-space area was planned around the three cedar trees; another open-space area with barbecues would be to the north around a large avocado tree; and to the south a strawberry tree with open space. The public right-of-way would continue along the front of the property. City parking and traffic requirements would be met and rear building setbacks would not be exceeded.

**Commissioner Reed** noted that Units 13 and 14 would be handicapped accessible, but Units 4 and 5, which were, essentially, clones of Units 13 and 14, would not be accessible. He asked why all four of these units were not accessible. He understood that it was not required, but could it be done?

**Mr. Nystrom** replied that the accessible parking was near Units 13 and 14, while Units 4 and 5 would be below that parking.

**Commissioner Reed** asked that he look into making Units 4 and 5 accessible.

**Alice Cavette**, local resident, stated that she and her husband had made comments last July about the number of mature cedar and redwood trees that were slated for removal. They were told that the City was also concerned. Now, ten months later, the layout had not changed and 67 of the 72 trees would be removed. They were told that the vast majority of the trees were located in the center of the site, which made it difficult to work around and to incorporate into a logical site plan. Most of the open space would be to the rear of the property, while most of the trees were located close to Mission Boulevard. In her opinion, the site design could have left at least half of the trees for a central open-space paseo off Mission Boulevard. The two center, four-unit buildings could have been redesigned and realigned further back. Fifty of the trees qualified for protection, but their removal would be allowed by a mitigation of paying in-lieu fees, which “was just wrong...” and not adequate. The new trees would be planted along the railroad tracks at the rear of the property and people driving along Mission Boulevard would see a mostly barren development with glimpses of the new trees after many years of growth. She also mentioned that migratory birds also used these mature trees for their nesting habitat. This is the third development seen within a year where the developer had been allowed to remove trees that could have been preserved if the City had demanded that the developer

change their layout. She also questioned why the existing 1920s home had not been reviewed by HARB.

**Mr. Shair's** comments were:

- The most important trees would be saved. Obviously, the grove in the middle would have hindered the development.
- The mitigation trees would be clustered around the common spaces throughout the project and at the rear near the railroad tracks.
- As requested by the neighbors, the sidewalk would be extended across the project.
- Regarding endangered species, A CEQA analysis supported their mitigated non-declaration.

The Commissioners asked the following:

- **Commissioner Leung** asked what the timeframe for the construction was.  
*Mr. Shair stated that the timeframe was regulated by City statute. Typically, it would be finished within one and one-half years. The earliest they could start would be after submission of construction drawings and obtaining building permits, which would be about six months from approval of the Planned District. They would make every effort to reduce construction noise, dust and pollutants to a suitable level. They planned to be immediately available to all neighbors who might have questions throughout the process.*  
*Associate Planner Roth clarified that the construction would comply with the City's requirements, with construction hours between 7:00 a.m. to 7:00 p.m., Monday through Friday; 9:00 a.m. to 6:00 p.m., Saturdays and holidays, and no work on Sundays.*  
*Planning Manager Wheeler noted that requirement was included in the Conditions of Approval.*
- **Commissioner Karipineni** had noted that at least one tree slated for removal was in what would be a backyard and some others would be in the open spaces. What was the thinking behind the removal of those trees?  
*Many of those backyard trees would be located close to the footprint of the building.*  
*Associate Planner Roth added that 46 trees qualified under the City's ordinance. To achieve the current low range of the allowable density, the buildings would need to be taller and would be less compatible with the surrounding neighborhoods, if more trees were allowed to stay*
- **Commissioner Bonaccorsi** asked about the hazardous materials on the site.  
*An environmental company had taken samples and the level of contamination was equal to someone's backyard citrus grove. Per the Condition of Approval, they planned to take the necessary mitigation steps. The Fire Department would do the testing, again, later in the process.*
- **Commissioner Dorsey** asked if the mitigation trees at the rear of the property have anything to do with the railroad tracks.  
Yes, however, another reason was the creation of the private drive that would offset the traffic concerns and would allow parking above and beyond what was required by the zoning.

- Mission Boulevard was, essentially, a highway, with noise from it at the front of the project and noise from the railroad at the rear. What was planned to mitigate that noise from both sides of the development? From her experience she knew the noise would be even louder at the second and third stories than it would be at street level.

*A freight train infrequently used the tracks at the rear of the property. A soundwall was at the rear and the closer to the wall, the better the sound suppression. A lot of buffering would occur between the soundwall and the existing, 100-foot redwood trees. A noise study had shown that some of the units would require STC rated windows, which were also part of the Conditions of Approval.*

**Chairperson Pentaleri** closed the Public Hearing.

**Chairperson Pentaleri** asked why the house mentioned by the speaker had not been reviewed by HARB.

**Associate Planner Roth** stated that the historical evaluation of each property concluded that neither house possessed historic significance nor met the criteria for eligibility on the California Register nor were they listed on the local City register.

**Chairperson Pentaleri** asked, as a former seven-year HARB member, who had performed the historical assessment.

**Associate Planner Roth** replied that an unbiased consultant had been hired to perform the review.

**Commissioner Bonaccorsi** asked:

- Why the removal of so many trees, as brought up by the speaker?  
*Associate Planner Roth said that more units could have been fitted into a smaller space, thereby, preserving more trees. However, the consequence of that would have been that the buildings would have been taller. The R-3 District would have allowed up to 52-foot heights, while this project would be 38.5 feet high.*
- What would have been the trade-off on site design?  
*Single-family residences existed on the other side of the railroad tracks that currently enjoyed some views of the Mission foothills. Higher homes would have blocked some of those views.*
- What was the process used by the City to determine whether trees should be preserved, as opposed to the mitigation of planting new trees?  
*A certified arborist had conducted a tree survey and 72 ordinance-sized trees were identified, of which 46 qualified for protection. The remainder were fruit trees, which were not protected under the ordinance.*  
*Principal Planner Morris added that this project had been in the planning stages with the City for approximately one year. Preserving trees was a goal of the City, if they were in the right location. It would be very difficult to retain all of the*

*trees that were located in the middle of the site when a loop street was a part of the site design and was necessary with this many units. The give and take with this project ended up with some important trees being saved in some pretty good locations and some other trees being lost.*

**Principal Planner Morris** noted that the Gold Sheet showed the addition of Condition E-14, which related to vines being planted on the exterior of the wall near the railroad tracks to discourage graffiti.

**Commissioner Leung** appreciated the developer's efforts, because an in-fill project was difficult. This project would improve this area of Mission Boulevard, along with conforming with the City's plan for growth. She encouraged more developers to consider filling in more of the City's undeveloped and uncared for pockets.

**Chairperson Pentaleri** stated that the staff report showed that a great deal of consideration had been given not only to the circulation through the project but to the noise mitigation. The orientation and site layout was appropriate and the new homeowners' experiences should be a good situation when taking into consideration the nearby railroad tracks. He was always interested in preserving trees, although newly planted trees grew quickly. The preponderance of the correspondence had supported this project and the opposing correspondence complained about view impacts. This project was at the low end of the allowed density range and was far below the maximum allowed height of 52 feet. It was very rare for the Planning Commission to see a project that had not "crammed" so much onto a site that parking was insufficient. This project had parking that was in excess of City regulations. This is a good project. He would support it.

IT WAS MOVED (REED/LEUNG) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0) THE PLANNING COMMISSION – RECOMMENDED THAT CITY COUNCIL:

ADOPT THE DRAFT MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PLAN AND FIND ON THE BASIS OF THE WHOLE RECORD BEFORE IT (INCLUDING THE INITIAL STUDY AND ANY COMMENTS RECEIVED) THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;

AND

FIND THAT THE PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS, OBJECTIVES AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE, COMMUNITY CHARACTER, MOBILITY, AND SAFETY CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

FIND THE PRELIMINARY AND PRECISE PLANS AS DEPICTED IN EXHIBIT “C,” (PRECISE SITE PLAN, ARCHITECTURAL ELEVATIONS AND FLOOR PLANS, AND LANDSCAPE PLANS), FULFILL THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;

AND

DETERMINE THAT WHILE AN OUTDOOR LDN OF 60 DB(A) OR LOWER IN THE TWO COMMON OUTDOOR AREAS ON THE NORTH AND SOUTH SIDE OF THE SUBDIVISION CANNOT BE ACHIEVED AFTER THE APPLICATION OF APPROPRIATE MITIGATIONS, AN LDN OF 65 DB(A) IS PERMITTED FOR THESE TWO AREAS FOR THE REASONS DESCRIBED IN THE STAFF REPORT;

AND

FIND THAT THE PROPOSED SUBDIVISION AND PRIVATE STREET AS SHOWN IN EXHIBIT “E” (VESTING TENTATIVE TRACT MAP NO. 8186 AND PRIVATE STREET) ARE CONSISTENT WITH THE GOALS, POLICIES AND IMPLEMENTATION ACTIONS OF THE CITY OF FREMONT’S GENERAL PLAN. GOVERNMENT CODE SECTION 66474 AND FMC SECTION 17.20.200 PROVIDE THAT A TENTATIVE MAP APPLICATION MUST BE DENIED IF CERTAIN SPECIFIED FINDINGS ARE MADE. NONE OF THOSE FINDINGS CAN BE MADE IN THIS INSTANCE AS SET FORTH IN THIS REPORT AND EXHIBIT “D;”

AND

INTRODUCE AN ORDINANCE APPROVING A REZONING OF THE ENTIRE PROJECT SITE FROM R-G-29, GARDEN APARTMENT RESIDENCE DISTRICT TO PLANNED DISTRICT P-2013-188, AS DEPICTED ON EXHIBIT “B” (REZONING MAP), AND APPROVING THE PRELIMINARY AND PRECISE PLANS AS SHOWN ON EXHIBIT “C,” (PRECISE SITE PLAN, ARCHITECTURAL ELEVATIONS AND FLOOR PLANS, AND LANDSCAPE PLANS) AND THE EXCEPTIONS, MODIFICATIONS AND RELATED PROVISIONS AS SET FORTH IN EXHIBIT “F,” (USE AND DEVELOPMENT PROVISIONS) BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT “D;”

AND

APPROVE VESTING TENTATIVE TRACT MAP 8186 AND A PRIVATE STREET AS SHOWN ON EXHIBIT “E,” BASED UPON THE FINDINGS SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT “D;”

AND

APPROVE THE PROPOSED REMOVAL AND MITIGATION FOR 46 PROTECTED TREES PURSUANT TO THE CITY’S TREE PRESERVATION ORDINANCE, BASED UPON FINDINGS AND CONDITIONS IN EXHIBIT “D;”

AND

DIRECT STAFF TO PREPARE AND THE CITY CLERK TO PUBLISH A SUMMARY OF THE ORDINANCE.



The motion carried by the following vote:

AYES: 7 – Bonaccorsi, Dorsey, Jones, Karipineni, Leung, Pentaleri, Reed  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0  
RECUSE: 0

**DISCUSSION ITEMS**

**MISCELLANEOUS ITEMS**

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

**Principal Planner Morris** announced that the next Planning Commission meeting was scheduled for May 22, 2014.

**Commissioner Dorsey** stated that she would not be attendance on May 22<sup>nd</sup>, as she had a previous commitment.

- Report on actions of City Council Regular Meeting

None

- Information from Commission: Commission members may report on matters of interest.

Meeting adjourned at 7:45 p.m.

SUBMITTED BY:



Alice Malotte  
Recording Clerk

APPROVED BY:



Wayne Morris, Secretary  
Planning Commission